

Part of 9

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:

Richard Alan Haase

SERIAL NO: 09/675,695

FILED: September 29, 2000

TITLE: Clarification of Water and
Wastewater

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DOCKET NO.:

ClearValue - 005

GROUP ART NO: 1724

EXAMINER: HRUSKOCI, P.

STATEMENT OF FACTS IN SUPPORT OF PETITION TO
MAKE SPECIAL BECAUSE OF ACTUAL INFRINGEMENT

The Honorable Commissioner
of Patents & Trademarks
Washington, D.C. 20231

RECEIVED
OCT 25 2001
TC 1700

I, Robert M. Bowick, of The Matthews Firm, 1900 West Loop South, Suite 1800, Houston, Texas 77027, Telephone (713) 355-4200, Registration No. 46,769, am a Practitioner and Attorney representing the Applicant in the above identified Patent Application to make the following statements:

1. There is an infringing product and/or method of use on the market. The product and/or method that I allege infringes the claims of this application was first discovered by Applicant after reviewing ANSI/NSF Standard 60, Listings of Certified Drinking Water Chemicals – Health Effects. Applicant specifically discovered that at least twelve (12) chemical suppliers and/or public utilities are infringing Claims 1 through 10 of the originally filed application. A copy of the ANSI/NSF Standard 60, Listings of Certified Drinking Water Chemicals – Health Effects, for these alleged infringing products and/or methods of use are attached hereto as

Exhibit A. Specifically, the attached NSF listings identify numerous chemical suppliers with their product's trade names and designated functions. The NSF listings also identify the maximum dosages of product per volume of water and the carryover of specific polymers including aluminum, polyacrylamide, DADMAC and/or Epi-DMA. Although the specific molecular weights of these compounds are not disclosed in these listings, it is highly probable that high molecular weights are being utilized to treat hard-to-treat water (Low alkalinity and/or low turbidity). *See Affidavit of Billy L. Gibson*, Attached hereto as Exhibit C ("With operation of the present invention, unexpected results were achieved with the plant in operating permit within hours of introduction of the present invention. Further, the plant operates better today in all types of water than it ever had in the past."). It is inconceivable that the City of Marshall would deviate from the system, method or process that its own treatment plant supervisor readily admits optimize the efficiency and effectiveness of the city's treatment plant and was the first system, method or process to bring the Marshall plant within EPA effluent standards. *See Affidavit of Billy L. Gibson*, Attached hereto as Exhibit C. Today the City of Marshall, Texas is being supplied with systems, methods and/or process to treat the water supply by Alivia, Inc. The NSF listings show that Alivia markets their polymer blend under the trade name "AquaPac" for coagulation/flocculation. Additionally, the NSF listing for "AquaPac" shows a maximum dosage of 75 mg/L with a

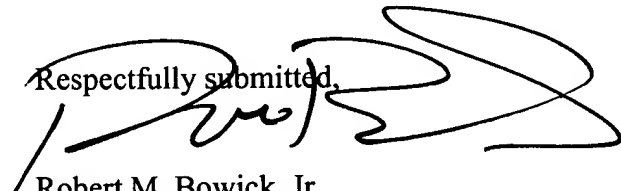
carryover of less than 2 mg/L of aluminum and less than 50 µg/L of the ammonium polymer DADMAC.

2. Additionally, Applicant has actual notice of infringement which he personally received from municipal water treatment plant operating supervisors. *See Affidavit of Richard Alan Haase*, Attached hereto as Exhibit B.
3. Further, Billy L. Gibson, Water Treatment/Production Manager for the City of Marshall, Texas, acknowledges prior to the introduction of the invention of the present application, “the City of Marshall had a significant water treatment challenge relating to raw water quality and available chemical method of treatment. At that time the water production facility was UNABLE to produce water at less than 0.5 NTU (much less able to produce at less than 0.3 to 0.1 NTU) and 15 standard color units. We (Marshall) tried all known chemical methods of treatment in the laboratory. . . the (Marshall) plant operates better today in all types of water than it ever had in the past. Today, Marshall produces water at less than 0.1 NTU, always. Previously our best performance was 0.13 NTU and was normally 0.15 to 0.25 NTU during good water conditions.” *Affidavit of Billy L. Gibson*, ¶17, Attached hereto as Exhibit C. ClearValue is no longer the supplier of systems, methods or processes for treating water for the City of Marshall, Texas. Today, Altivia, Inc. supplies the City of Marshall with systems, methods or process for treating the city’s water. Prior to ClearValue’s introduction of the invention of the

present application, the City of Marshall's own Water Treatment/Production Plant Manager admits that the city's water treatment facilities could not meet EPA standards. *See Affidavit of Billy L. Gibson.* Mr. Gibson further states that all known, then existing systems, methods or processes could not bring the Marshall plant within EPA standards. Since ClearValue's introduction of the invention of the present application at the water treatment plant in Marshall, Texas, the city has continuously met prescribed water quality standards. As Altiviva, Inc. is currently providing the systems, methods, or processes for Marshall's water treatment facilities, it is highly probable that Altiviva, Inc. is utilizing the invention of the present application.

4. I have made a comparison of the above identified infringing systems, methods and/or processes and the claims of this application and in my opinion, originally filed claims 1 through 10 are unquestionably infringed.
5. A search for the prior art was conducted before this application was filed and I have good knowledge of the pertinent prior art. All such material prior art was provided to the Examiner in an Information Disclosure Statement filed on June 30, 1999 and a supplemental Information Disclosure Statement filed on August 24, 2001.
6. I believe all the claims in this application are allowable.

Respectfully submitted,


Robert M. Bowick, Jr.
Reg. No. 46,769

Date: 30 Aug 01

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